

# Senate File 2275 - Introduced

SENATE FILE 2275  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3129)

(COMPANION TO HF 2239 BY  
COMMITTEE ON COMMERCE)

## A BILL FOR

1 An Act relating to noninsurance business transactions regulated  
2 by the insurance division of the department of commerce,  
3 by providing for regulated securities and exchanges, and  
4 financial records associated with the sale of cemetery and  
5 funeral merchandise and services.  
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

IOWA UNIFORM SECURITIES ACT

Section 1. Section 502.202, subsection 2, paragraph e, subparagraph (1), Code 2018, is amended to read as follows:

(1) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 ~~or designated for trading on the national association of securities dealers automated quotation system.~~

Sec. 2. Section 502.202, subsection 24, paragraph a, Code 2018, is amended to read as follows:

a. *Definitions.* As used in [this subsection](#), unless the context otherwise requires:

(1) *"Intermediary"* means ~~a~~ any of the following:

(a) A broker-dealer that is subject to the registration requirements of [section 502.401](#) and that facilitates the offer and sale of securities by issuers to investors through an internet-based system that is open to and accessible by the general public.

~~(b) *"Intermediary"* also means an entity registered with the administrator as an Iowa crowdfunding portal. A business entity that is all of the following:~~

~~(i) A funding portal that is registered with the securities and exchange commission pursuant to the Securities Act of 1933, including as provided in 15 U.S.C. §77d-1.~~

~~(ii) A member of the financial industry regulatory authority, inc. pursuant to the Securities Exchange Act of 1934, including as provided in 15 U.S.C. §§78c and 78o-3, and 17 C.F.R. §227.400.~~

(c) A business entity that qualifies as an Iowa crowdfunding portal by meeting all of the following requirements:

(i) Is registered with the administrator as required by the administrator.

(ii) Is engaged in intrastate crowdfunding offers and sales of exempt securities in this state through an internet site.

1     ~~(iii) Does not operate or facilitate a secondary market in~~  
2 securities.

3     (2) *"Intrastate crowdfunding"* means the offer or sale of  
4 a security by an issuer in a transaction that is available  
5 for purchase only by an Iowa residents and by resident or a  
6 ~~business organizations located in, and organized and registered~~  
7 ~~under the laws of, entity having its principal place of~~  
8 business in this state.

9     ~~(3) "Iowa crowdfunding portal" means an entity incorporated~~  
10 ~~or organized under the laws of this state, authorized to do~~  
11 ~~business in this state, and engaged exclusively in intrastate~~  
12 ~~crowdfunding offers and sales of exempt securities in this~~  
13 ~~state through an internet site and which does not operate or~~  
14 ~~facilitate a secondary market in securities.~~

15     Sec. 3. Section 502.202, subsection 24, paragraph c, Code  
16 2018, is amended to read as follows:

17     c. *Aggregate sales limit.* The aggregate amount of  
18 securities sold to all investors by the issuer during the  
19 twelve-month period preceding the date of the offer or sale,  
20 including any amount sold in reliance upon the exemption in  
21 this subsection, shall not exceed ~~one~~ five million dollars  
22 other than either of the following:

23     (1) Securities sold to Iowa resident institutional  
24 investors.

25     (2) Securities sold to the Iowa resident issuer's  
26 management.

27     Sec. 4. Section 502.302, subsection 3, Code 2018, is amended  
28 to read as follows:

29     3. *Notice filings for federal covered securities under*  
30 ~~section 18(b)(4)(D)~~ 18(b)(4)(F). With respect to a security  
31 that is a federal covered security under section ~~18(b)(4)(D)~~  
32 18(b)(4)(F) of the Securities Act of 1933, 15 U.S.C.

33 ~~§77r(b)(4)(D)~~ §77r(b)(4)(F), a rule under **this chapter** may  
34 require a notice filing by or on behalf of an issuer to include  
35 a copy of form D, including the appendix, as promulgated by the

1 securities and exchange commission, and a consent to service  
2 of process complying with [section 502.611](#) signed by the issuer  
3 not later than fifteen days after the first sale of the federal  
4 covered security in this state and the payment of a fee of one  
5 hundred dollars; and the payment of a fee of two hundred fifty  
6 dollars for any late filing.

7 Sec. 5. Section 502.406, subsection 5, Code 2018, is amended  
8 to read as follows:

9 5. *Additional conditions or waivers.* A rule adopted  
10 or order issued under [this chapter](#) may impose such other  
11 conditions, not inconsistent with the National Securities  
12 Markets Improvement Act of 1996. An order or rule issued  
13 under [this chapter](#) may waive, in whole or in part, specific  
14 requirements in connection with registration as are in the  
15 public interest and for the protection of investors.

16 DIVISION II

17 VIATICAL SETTLEMENT ACT

18 Sec. 6. Section 508E.15, subsection 4, paragraph a,  
19 subparagraph (4), Code 2018, is amended to read as follows:

20 (4) The national association of insurance commissioners;  
21 ~~the national association of securities dealers~~ the financial  
22 industry regulatory authority, inc.; the North American  
23 securities administrators association; their employees, agents,  
24 or representatives; or other regulatory body overseeing life  
25 insurance, viatical settlements, securities, or investment  
26 fraud.

27 DIVISION III

28 IOWA CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL SERVICES ACT

29 Sec. 7. Section 523A.207, Code 2018, is amended to read as  
30 follows:

31 **523A.207 Audits Report by certified public accountants —**  
32 **penalty penalties — waiver — confidentiality.**

33 1. A purchase agreement shall not be sold or transferred,  
34 as part of the sale of a business or the assets of a business,  
35 until ~~an audit has been performed by a certified public~~

1 accountant has completed an agreed-upon procedures engagement  
 2 in accordance with the attestation standards established by the  
 3 American institute of certified public accountants and a report  
 4 is filed with the commissioner that expresses the auditor's  
 5 opinion of factual findings and results of applying the  
 6 agreed-upon procedures that verifies the adequacy or inadequacy  
 7 of funding related to the purchase agreements to be sold or  
 8 transferred.

9     2. If the buyer of a purchase agreement sold or transferred  
 10 as part of the sale of a business or the assets of a business,  
 11 fails to file ~~such an audit~~ a report described in subsection 1,  
 12 the commissioner ~~shall~~ may suspend the preneed seller's license  
 13 of the buyer and the preneed sales license of any sales agent  
 14 in the employ of the buyer until the ~~audit~~ report is filed. In  
 15 addition, the commissioner ~~shall~~ may assess a penalty against  
 16 the buyer in an amount up to one hundred dollars for each  
 17 day that the ~~audit~~ report remains unfiled. The commissioner  
 18 shall allow a thirty-day grace period after the date that a  
 19 purchase agreement is sold or transferred before suspension  
 20 of a license or assessment of a penalty for failure to file  
 21 ~~an audit pursuant to this subsection~~ the report. Upon good  
 22 cause, the commissioner may issue an order waiving the report  
 23 requirements.

24     ~~2.~~ 3. All records maintained by the commissioner under  
 25 this section shall be confidential pursuant to section 22.7,  
 26 subsection 58, and shall not be made available for inspection  
 27 or copying except upon approval of the commissioner or the  
 28 attorney general, or except when sought by the preneed seller  
 29 to whom the records relate. Such records shall be privileged  
 30 and confidential in any judicial or administrative proceeding  
 31 except any of the following:

32     a. An action commenced by the commissioner.

33     b. An administrative proceeding brought by the insurance  
 34 division.

35     c. An action or proceeding which arises out of the criminal

1 provisions of the laws of this state or of the United States.

2       d. An action brought by the insurance division or  
3 the attorney general to recover moneys for embezzlement,  
4 misappropriation, or misuse of trust funds.

### EXPLANATION

6 The inclusion of this explanation does not constitute agreement with  
7 the explanation's substance by the members of the general assembly.

8       GENERAL. This bill provides for the regulation of a number  
9 of noninsurance business transactions and associated entities  
10 by the insurance division (division) of the department of  
11 commerce.

12 BLUE SKY LAW — GENERAL. The amended provisions include  
13 sections in the "Iowa Uniform Securities Act" which is  
14 sometimes referred to as the "Blue Sky Law (Code chapter  
15 502). A person is prohibited from offering to sell or selling  
16 a security in this state unless it is registered with the  
17 division, exempt from registration, or a federal covered  
18 security regulated under federal law (Code section 502.301).  
19 The bill amends provisions that are closely connected to  
20 two federal statutes: the "Securities Act of 1933" and the  
21 "Securities Exchange Act of 1934" (for citations, see Code  
22 section 502.103) as administered by the federal securities and  
23 exchange commission (SEC). The SEC works in close cooperation  
24 with several private entities including the financial industry  
25 regulatory authority (FINRA).

26 BLUE SKY LAW — CHANGE IN ORGANIZATION. The bill strikes  
27 references to the national association of securities  
28 dealers (NASD) which was a self-regulatory organization of  
29 the securities industry responsible for the operation and  
30 regulation of the NASDAQ stock market and over-the-counter  
31 markets. It has been succeeded by FINRA, a not-for-profit  
32 organization recognized by federal statute to regulate  
33 broker-dealers engaged in transactions involving the purchase  
34 and sale of securities for their own account or for the account  
35 of others.

1 BLUE SKY LAW — INTRASTATE CROWDFUNDING — BILL'S  
 2 PROVISIONS. The bill amends provisions (Code section  
 3 502.202(24)) that currently exempt intrastate crowdfunding from  
 4 certain Blue Sky Law requirements, including the registration  
 5 of securities (Code sections 502.301 and 502.306) and the  
 6 filing of sales and advertising literature (Code section  
 7 502.504).

8 The bill revises the definition of "intermediary" to include  
 9 a business entity that satisfies two requirements: (1) be  
 10 registered with the SEC as a funding portal and (2) be a member  
 11 of FINRA (17 C.F.R. §227.400). Under federal law, a funding  
 12 portal cannot offer investment advice or recommendations or  
 13 solicit purchases or sales of securities, or handle investor  
 14 assets (17 U.S.C. §78c(a)(80)).

15 Currently, in Iowa, an intermediary is limited to either  
 16 a broker-dealer registered with the division (Code section  
 17 502.401) or a business entity, such as a corporation,  
 18 qualifying as an "Iowa crowdfunding portal" which means  
 19 it: (1) is registered with the division, (2) is organized  
 20 under state law, (3) is engaged exclusively in intrastate  
 21 crowdfunding offers and sales of exempt securities in this  
 22 state through an internet site, and (4) does not operate or  
 23 facilitate a secondary market in securities. The bill provides  
 24 that an Iowa crowdfunding portal would no longer be required to  
 25 be organized or authorized to do business in this state or be  
 26 engaged in crowdfunding exclusively in this state. Finally,  
 27 the bill increases the aggregate amount of securities that  
 28 could be sold to investors by an issuer acting through an  
 29 intermediary during the 12 months prior to the date of offer or  
 30 sale from \$1 million to \$5 million.

31 BLUE SKY LAW — INTRASTATE CROWDFUNDING. "Crowdfunding"  
 32 refers to the practice of raising capital to finance ventures  
 33 (e.g., start-ups and early stage companies) by attracting  
 34 investments generally from small contributors purchasing an  
 35 equity position (e.g., the purchase of stock) via the internet.

1 "Intrastate crowdfunding" refers to a securities transaction  
 2 that is: (1) available for purchase only by an Iowa resident  
 3 or business entity having its principal place of business in  
 4 this state and (2) made via an intermediary's internet site.  
 5 The bill requires the business entity maintain its principal  
 6 place of business in this state.

7 BLUE SKY LAW — REGULATION OF NOTICE FILINGS AND FEES. The  
 8 bill updates a statutory citation that provides that the SEC  
 9 form "D", a notice of an exempt offering (17 C.F.R. §239.500),  
 10 and an associated fee are required to be filed with the  
 11 division. The federal "National Securities Markets Improvement  
 12 Act of 1996" (Pub. L. No. 104-290) amended the Securities  
 13 Act of 1933, by creating a class of securities referred  
 14 to as "covered securities" which when sold by a licensed  
 15 broker-dealer is no longer subject to state registration but  
 16 may be subject to notice filings at the state level so long as  
 17 the state's requirements are substantially the same as those in  
 18 effect on September 1, 1996 (15 U.S.C. §77r).

19 VIATICAL SETTLEMENTS — CHANGE IN ORGANIZATION. The bill  
 20 amends a provision referring to circumstances in which a  
 21 person may be immune from liability from an offense involving  
 22 a fraudulent viatical settlement act, if the person acting in  
 23 good faith sends or receives information from NASD. The bill  
 24 changes that organization to FINRA.

25 AUDIT REQUIREMENTS ASSOCIATED WITH THE SALE OF CEMETERY  
 26 AND FUNERAL MERCHANDISE AND SERVICES. The bill amends the  
 27 "Iowa Cemetery and Funeral Merchandise and Funeral Services  
 28 Act" (Code chapter 523A) which regulates business entities and  
 29 sales agents offering to provide cemetery merchandise, funeral  
 30 merchandise, or funeral services upon an individual's death.  
 31 The bill provides that when a purchase agreement is acquired as  
 32 part of the sale of a business or the assets of a business, a  
 33 buyer would no longer be required to comply with the statute's  
 34 audit requirements. A requirement for an audit performed by a  
 35 certified public accountant is replaced by a simpler process



1 of review referred to as an agreed-upon procedures engagement  
2 and accompanying report. In addition, the division may waive  
3 this requirement based on good cause (Code section 523A.207).  
4 A purchase agreement refers to an agreement to furnish cemetery  
5 merchandise, funeral merchandise, and funeral services which  
6 may occur more than 120 days following an initial payment (Code  
7 section 523A.102).